

NOTE: Pursuant to Fed. Cir. R. 47.6, this disposition is not citable as precedent. It is a public record.

United States Court of Appeals for the Federal Circuit

05-3285

CHARLES R. JORDAN,

Petitioner,

v.

MERIT SYSTEMS PROTECTION BOARD,

Respondent.

DECIDED: April 7, 2006

Before MAYER, LOURIE, and LINN, Circuit Judges.

PER CURIAM.

Charles R. Jordan appeals the decision of the Merit Systems Protection Board, which dismissed his appeal for lack of jurisdiction. Jordan v. Dep't of the Air Force, SF3443040747-I-1 (MSPB Aug. 29, 2005). We affirm.

This court may only reverse a board's decision if it was arbitrary, capricious, an abuse of discretion, or unlawful; procedurally deficient; or unsupported by substantial evidence. See 5 U.S.C. § 7703(c). Whether the board has jurisdiction over an appeal is a question of law that we review de novo. See Herman v. Dep't of Justice, 193 F.3d 1375, 1378 (Fed. Cir. 1999).

Jordan had the burden to establish the board's jurisdiction by presenting evidence that he was an eligible civilian federal employee entitled to appeal to the board under the Uniformed Services Employment and Reemployment Rights Act of 1994 (codified as amended at 38 U.S.C. §§ 4301-4333) ("USERRA"). Although aware his status as a "civilian employee" was at issue, Jordan failed to present any evidence that he was a civilian employee of the Air Force. His military medical history was not relevant to that question. We find no error in the board's factual determinations and conclude that the board lacked jurisdiction over the appeal.